IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

Public Interest Litigation W.P.(Ld) No.66 of 2006

Chandravardhan Parekh)
aged about 71 years)
residing at 28,Piroja)
Mansion, Ali Bhai)
Premji Marg,)
Mumbai 400 064) ..Petitioner

vs.

1.The Board of Control)
for Cricket in India)
a registered society)
having its Head)
Quarter at "Brabourne)
Stadium, North Stand)
Veer Nariman Road,)
Mumbai 400 021)
through its Honorary)
Secretary)
Shri Niranjan R.Shah)

2.Shri Lalit Kumar Modi)
C/o M/s Modi)
Enterprises, Nirlon)
House, Dr.Annie)
Beasant Road, Worli)
Mumbai 400 036) ..Respondents

Mr.K.K.Singhvi, Sr.Counsel with Mr.C.U.Singh, Sr.Counsel with Ms.Soma Singh and Mr.Vivek Sharma for petitioner

Mr.Venkatesh Dhond with Ms.Usha Dahanukar, Ms.Neha Bhide and Mr.Kaushal Shroff i/b UKD Legal for respondent no.1

Mr.Janak Dwarkadas, Sr.Counsel i/b M/s Crawford Bayley and Co. for respondent no.2.

CORAM : SWATANTER KUMAR C.J. AND
S.C.DHARMADHIKARI J.
7th September, 2007

Judgment Reserved on : 27.6.2007

Judgment Pronounced on: 7.9.2007

J U D G M E N T (Per S.C.Dharmadhikari J.)

1. The petitioner has approached this Court by the present Public Interest Litigation under Article 226 of the Constitution of India challenging the election of Respondent no.2 to the post of Vice President of Respondent no.1 Association (for short BCCI). The reliefs claimed in the petition are as under:

> (a) That this Hon'ble Court be pleased to issue a Writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction of this Hon'ble Court directing the respondent no.1 to remove the Respondent No.2 from holding any office or positio in the affairs of the Respondent No.1 as he has been convicted for committed offence involving drug, trafficking, criminal assaults and abused the statutory provisions enacted in the State of Rajasthan.
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> (b) That this Hon'ble Court be pleased to issue a writ of Mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction of this Hon'ble Court prohibiting the

Respondent No.2 from continuing to hold any office or position in the affairs of Respondent No.1 including participating in any affairs of the respodent no.1;

(c) That this Hon'ble Court be pleased to issue a Writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction of this Hon'ble Court directing the respondent no.1 to act strictly in terms of the statutory principles of not permitting any person to hold any office or position who has been criminally convicted and found to have acted contrary to the "Regulations for Players, Team Officials, Managers, Umpires and Administrators"

2. The petition is by a cricket lover. He claims it is filed in public interest. He contends that he is keenly interested in promotion of game and its development. He also projects the interests of sports and cricket lovers all over the country who look upon the BCCI as protecting and safeguarding the interest of citizens in the game. The petition alleges that Respondent No.2 could not have been elected and in any event cannot continue as Vice President. He is convicted of an offence involving moral

turpitude. His involvement is in a case of possession of a substance, which is prohibited in law. In other words, he was convicted after being found in possession of 1 gram of Cocaine. Hence, he deserves to be removed. After relying upon the Rules and Regulations and Memorandumand those pertaining to administrator of BCCI, it is contended thus:

> "It, therefore, follows that in the event any person is found to have either been possessing or dealing with or in any way being connected with or distribution of any illegal drug or indulging in gambling, betting or receiving any financial speculations or on any Match or any cricketing event in any part of the World or accepting any money from a bookmaker or being convicted in any criminal proceeding involving moral turpitude or detrimental to the game of cricket or endangering the harmony or affect the reputation or interest of the Respondent No.1. Admittedly, "cocaine" is not only a prohibited drug, but mere possessing the same is a criminal offence of serious nature. Any one caught with the said drug and that too more than 400 grams and involved in trafficking of the same is a serious offence and in terms of Regulation 6.2.2 of the Regulation of the Respondent No.1, it is punishable offence. Therefore, no "Administrator" having committed his guilt of drug trafficking of "cocaine" can be permitted to be exonerated by the Respondent no.1.
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> "If therefore, if it is detected that although an official of the Respondent No.1 (the Respondent No.2) was caught in a foreign country having involved in drug trafficking of "cocaine" and having admitted his guilt, in addition to other charges of serious nature and sentence is permitted to hold important position in the affairs of the Respondent No.1, being a body discharging public function, such indulgence shall have to be termed as "indulging in capricious and overt acts on the

part of the respondent no.1 and in gross violation of its own Regulations.

"The petitioner has only recently come to learnt that the Respondent No.2 was convicted in criminal charges of serious nature involving moral turpitude." The gist of the criminal acts and conduct committed by the Respondent No.2 and that too in a foreign country (United States of America) is set out thus:-

i. Mr.Lalit Modi was studying in Duke University, Durham, North Carolina, USA.

ii. Mr.Lalit Modi was involved in drug trafficking in 1985 and on 24th February, 1985 with Mr.John EI-Masry and Mr.Sheperd Small, two of his accomplishes barged into "Wilson House" and physically assaulted its resident Mr.Alexander Van Dyne and kidnapped him. As a result of beating with fists, kicking and hitting in the face, Mr.Alexander Van Dyne was seriouslsy injured causing soft tissue injuries, bruises, black eye, lacerations about the face and body, kidney damage requiring hospitalisation for two days for treatment.

iii. On being called by an onlooker, the Police arrested Mr.Modi along with his accomplishes and they were detained in custody for 3 days. During arrest of Mr.Modi, more than 400 grams of Cocaine was also found in possession of Mr.Modi.

iv. Mr.Modi was charged with indictment of 2nd Degree kidnapping and assault of Mr.Alexander Van Dyne and causing serious bodily injury and conspiracy to traffic in drugs in more than 400 grams of cocaine by the District Court of Durham County, North Caroline, USA.

v. On 24th June, 1985 Mr.Modi pleaded guilty of the charges, but taking advantage of the North Carolina General Statutes and the mitigating factors listed for first offence and on the recommendatory requests, a plea arrangements were entered into under Chapter 15A, para 1022 of the North Carolina General Statutes and Mr.Modi was sentenced by the Superior Court Division to a 2 year imprisonment in the N.C.Deptt.of Correction along with a $ 10,000 fine. The execution of the

said sentence of imprisonment was suspended and Mr.Modi as accused was placed on "supervised probation for 5 years term" with payment of $250.00 monthly plus supervision charges fee beginning from July 26, 1985. Mr.Modi was also sentenced to undergo and perform 300 hours of Community Services under the category of intermediate punishment under section 1340.11, Clause (6) of the North Carolina General Statutes, Chapter 15-A, (Criminal Procedure Code).

vi. After undergoing 100 hours of community services and payment of fine as sentenced, the court on 18th April, 1986 after recording that Mr.Modi had paid the fine of $10,000.00 and completed 100 hours of Community Services and being ill and hospitalized, modified the "supervised probation" to "unsupervised probation" subject to undertaking in writing to arrange and perform 200 hours of Community Services in India by June 23, 1990.

vii. The respondent No.2 with deliberate motive willfully suppressed and concealed the above 'conviction' as well as being involved in "drug trafficking" as admittedly before the Court of law.

viii. It is submitted that as the Respondent No.2 was convicted for offences involving criminal assault, kidnapping and drug trafficking and having pleaded guilty of the same, the Respondent no.2 could not have been appointed in any office or position of the respondent no.1 in terms of the Rules and Regulations, as stated above, and is not entitled to hold any office or position under the Respondent no.1 in any manner.

ix. The respondent no.2 is the president of Rajasthan Cricket Association, a full member of the Respondent No.1. By virtue of representing the Rajasthan Cricket Association in the year 2005, the respondent no.2 contested the election for the office of the "Vice President" of the respodnent no.1 and appointed so and it currently holding the post of "Vice President" of the Respondent No.1 in addition to other positions thereunder. The Respondent No.1 is, therefore, an Administrator within the meaning of the Rules and Regulations of the Respondent No.1 and governed under the ambits of the said rules and regulations. It is shocking

> to be informed that long prior to being elected to the office of the "Vice President" by the Respondent no.2 in the respondent no.1, all the officials of the Respondent No.1 had full knowledge about various criminal overt acts on the part of the Respondent no.2 and still they have caused the respondent no.2 to hold one of the most important position in the affairs of the respondent no.1. Respondent No.1 who conferred the position of "Vice President" to the respondent no.2 in the affairs of the respondent no.1 has acted in a manner opposed to the law and the Regulations of the respondent no.1 as set out more particularly hereinafter.

3. It is, therefore, contended that a person convicted of drug trafficking cannot be associated in any manner with the B.C.C.I. as that is not conducive to Healthy and proper development of the game and its administration. Reliance is placed upon the Rajasthan Sports (Registration, Recognition and Regulations of Associations) Ordinance, 2004 which later has been made an Act of the State Legislature namely Rajasthan Sports (Registration, Recognition and Regulation of Associations) Act, 2005 and eligibility criteria prescribed thereunder for contesting the Election. It is urged that respondent no.2 hails from a business family in the State of Punjab. He was not a resident of any District in Rajasthan nor was carrying on any business therefrom. In terms of section 15 read with Schedule "C" of the Rajasthan Sports Act, he was not qualified to contest and for being elected to any post or position in Rajasthan Cricket Association, more so, when he was convicted in the criminal case as

mentioned above. He was not residing in the State of Rajasthan and yet he contested the election. He has suppressed the above facts. In para 27 of the petition, the manner in which respodnent no.2 contested the State Sports Body Election is set out.

4. Based upon the above facts and circumstances, the reliefs as reproduced hereinabove have been claimed. In substance, it is alleged that respondent no.1 is under public duty to ensure that its office bearers are such who fulfil the eligibility criteria so also their acts are such as would subserve public interest. However, by allowing respondent no.2 to continue as Vice President, the first respondent has violated the Rules and Regulations so also its acts are contrary to public interest. It is alleged that by allowing respondent no.2 to function as Vice President, the respondent no.1 has acted contrary to the interest of the sports. All its actions are, therefore, violative of the mandate of Article 14 of the Constitution of India and in breach of the public duty. Therefore, the reliefs referred to above be granted.

5. Mr.K.K.Singhvi, learned Senior Counsel appearing for the petitioners, submits that it is not disputed that the

second respondent has been convicted of a serious charge. He has bargained for the punishment. Thus, guilt is established and proved. Once conviction is for offence involving drugs, then, the rules do not permit his continuation any more. He submits that the first respondent cannot adopt an attitude where under it would wash off its responsibility towards the sports lovers and all those who are interested in game. It has to act reasonably and fairly. All its actions must be transparent and subserving the public good. The Central Cricket Body should set an example in as much as it should be manned by persons of high calibre and character and genuine sportsmen. Today, the position is that the Sports Body is controlled fully by people from the business world and those having political and other connections. In such background, continuance of a person like second respondent is more disturbing. Learned Senior Counsel then submits that the first respondent has to follow the doctrine of fairness and act in good faith. All its activities should be directed towards protecting interest of the game. He invites our attention to the decision of the Hon'ble Supreme Court in the case of Zee Telefilms and another Vs. Union of India and others reported in A.I.R.2005 Supreme Court 2677 and submits that its present actions are contrary to law laid down therein. He submits that the

Rules and Regulations of Respondent No.1 specifically prohibits any of its "Administrator" as defined in Rule 1(n) of Regulation 2 from indulging in Gambling, Betting, including accepting moneys from a bookmaker. Further, he submits that any person guilty of moral turpitude cannot hold any office or position in public body discharging public functions. He submits that in the present case the offence complained of is serious and amounts to grave misconduct. In such circumstances, this Court should remove the respondent no.2 and direct the first respondent to hold election afresh for the vacancy that would be caused.

6. Learned Senior Counsel has invited our attention to the memorandum of Rules and Regulations of the first respondent and further contended that the Central Zone, which is one of the zones, over which the first respondent has jurisdiction and control, consists of Rajasthan Cricket Association. He submits that the term "Administrator" as defined in clause 1(n) is an inclusive definition. He submits that "Vice President" is the Administrator of the Board. He submits that the membership and jurisdiction of the members which is falling under clause 3 would make it clear that Rajasthan Cricket Association is a full time member of the first

respondent Board. The territorial jurisdiction of a member may be within the territory but the first respondent has over all supervision and control over the members. He has invited our attention to the composition of the Board, which is specified in Clause 7. He submits that the Board comprises of a President, 5 Vice Presidents from each zone and Hon. Secretary and Hon. Joint Secretary and Hon.Treasurer. He submits that a member or the Associate Member is entitled to have one representative on the Board and such representative is capable of being changed. He submits that the powers and duties of the Board are set out in Regulation No.9. Apart from the control over the players, which is one of its prime duty and function, the Board through its working committee and other committees fulfils the obligations stipulated in clause 9. He submits that one of the duties which the Board has to perform is making available for the purpose of this game, facilities and infrastructure, to conduct matches locally and internationally, to buy and sell property, to lay out the grounds, pavilions etc.; to collect funds so also to employ personnel. To take disciplinary action against the player or a Member of Board is also part of the duties. He submits that very wide powers have been conferred on the working committee. The Board is the richest association and has a monopoly

status. Once uncontrolled and sweeping powers are conferred, then, it is expected that working committee members act as trustees for all who elected them; sport lovers and general public.

7. He submits that the composition of the working committee is such that one representative of a member from each of the 5 zones, to be elected on principle of rotation in the respective zones, represents his zone on the Board. The process is by election. He submits that the powers of the President and Secretary are also enormous. He submits that clause 20 of the Regulations provides for election. He submits that all office bearers and Vice Presidents from each zone are elected annually and are eligible for re-election. He has invited our attention to the procedure for election and has contended that the Board has enough power to remove the office bearers. He has also invited our attention to clause 6.2 which, according to him, are additional regulations for administrator.

8. At this stage, it would be appropriate to reproduce this clause.

"6.2: Additional Regulations for Administrators:

The Administrators are required to follow the Regulations as mentioned here under:

1. No Administrator shall make any unsubstantiated allegation against any players, team officials, or administrators (present or past) in public through media or otherwise with respect to the breaches stated above and shall not comment on any matter relating to the functioning of the Board unless and until the said allegation is brought to the notice of the President in writing and a decision is reached by the Board in that behalf. As far as possible the Board shall decide on the said matters within a period of six months.

2. An Administrator shall not use or possess or in any way be concerned in the use or distribution of illegal drugs."

He submits that the mandate thereof is absolutely clear in as much as the Administrator shall not use or possess or in any way concerned in use and distribution of illegal drug. He submits that there is a prohibition to continue as Administrator if he is concerned in the use or

distribution of illegal drug. Mr.Singhavi has invited our attention to the order of conviction and sentence imposed upon the second respondent by the Court of Superior Division State of North Carolina holding the second respondent guilty and indicating him in conspiracy for trafficking in drugs. In such circumstances, he submits that the petition be allowed and reliefs be granted.

9. Mr. Singhvi has also invited our attention to Rajasthan Sports Act, 2005 and more particularly chapters 3 and 6 therein. He submits that section 15(1) clearly stipulates that all individual members are eligible to contest the elections of a Primary Sports Body and anyone contesting an election must possess the qualifications prescribed in Schedule "C" of this Act on the date of notification of the elections. He submits that the second respondent does not fulfil these requirements in as much as there is action which has been initiated against him vide show cause notice dated 11th July, 2005 calling upon respondent no.2 to show cause why disciplinary proceedings should not be initiated against him and appropriate action as deemed necessary be not taken including expulsion from the B.C.C.I. A reply is filed to that show cause notice by respondent no.2. He submits that Arbitration before the Arbitral Tribunal with regard to the same allegations

has been the subject matter of challenge in further proceedings and has not gained finality. For all these reasons the petition be allowed. Mr.Singhvi has relied upon the following decisions in support of the above submissions:

i) Board of Control for Cricket in India and another Vs. Netaji Cricket Club and others (2005) 4 SCC 741

ii) M/s Zee Tele Films Ltd. and another Vs.Union of India (AIR 2005 S.C.2677).

10. On other hand Mr.Dhond, learned Counsel appearing for the first respondent, submits that there is no substance in this petition in as much as it cannot be filed as "Public Interest Litigation". It is an abuse of process of Court. It is filed at the instance of the people who have lost the elections wherein second respondent was elected as a Vice President. The argument is that entire dispute is raised in the context of election to Rajasthan Sports Associations' elections with which the first respondent Board is not concerned. He submits that the second respondent is not the representative of Rajasthan Cricket Association but represents Punjab Cricket

Association. That apart, it is contended that the petition is not maintainable under Article 226 because the allegations do not touch upon the public character or public duties of the Board. It is with regard to the internal affairs of the Board and election of its working committee. It is very clearly held by the Hon'ble Supreme Court that no petition under Article 226 or Article 32 would lie against the Board in so far as its internal affairs and management is concerned. He submits that the rules and regulations of the first respondent do not prescribe for any disqualification or rendering ineligible the second respondent from contesting or being elected to the post of Vice President. There is no eligibility criteria. He submits that Rule 6.2.2 of the Regulations and Rule 38(iv) of the Rules framed by the first respondent would be applicable to a person, who is presently found using, possessing and connected with illegal drugs. The incident which is complained of in the present case is of the year 1985. He submits that in so far as Rule 32(iv) is concerned, a show cause notice was issued by the Board on 11th July, 2005. The show cause notice was challenged by filing a suit in Jaipur District Court being suit no.705 of 2005. There is an interim order sought restraining the Board from proceeding with the disciplinary action. At the same time the Treasurer

of Dholpur Cricket Association, Mr.Rana addressed a written complaint on 23th May, 2005 to the Secretary of the Rajasthan Cricket Association. As the Articles of Rajasthan Cricket Association provide for Arbitration, the complaint was referred to the arbitration of Shri Justice R.P.Saxena (Retired Judge of Rajasthan High Court) who entered upon the Reference and after considering the pleadings and other material on record, made an Award on 19th July, 2005 holding that the allegations made by Mr.Rana are not proved. Hence, the second respondent was not disqualified from holding the office of the President of Rajasthan Cricket Association. The award was challenged by Mr.Rana by filing a petition in the District Court, Jaipur being Arbitration No.361 of 2005 which was dismissed by the District Court on 31st March, 2006. These documents were forwarded by the second respondent in reply to the show cause notice and after considering the entire material so also the regulations, the Board has decided to withdraw the show cause notice and dropped the proceedings. In such circumstances, the present petition filed in public interest should not be entertained.

11. Mr.Dwarkadas, learned Senior Counsel appearing for the second respondent, submits that the present petition has been filed only to embarrass and harass the second

respondent. It is filed at the behest of Mr.Kishor Rungta, Mr. Kamal Morarka and Mr. Jagmohan Dalmiya who form part of a Group which lost elections to BCCI. He submits that the validity of election to Rajashtan Cricket Association cannot be raised in the present petition. The petitioner has raised the issues which are common to civil Appeal no.1260 of 2005 which is pending before the Hon'ble Supreme Court of India. Therefore, same allegations cannot be repeated and made subject matter of the present petition.

12. The petitioner has filed an Affidavit in Rejoinder and has contended that the petition is maintainable in the light of the decision of the Supreme Court in the case of M/s Zee Telefilms (supra). It is submitted that there is no merit in the preliminary objections raised on behalf of the respondents. He submits that there is nothing in common with the pending proceedings before the Hon'ble Supreme Court. It is contended that Regulation 6.2.2 would be attracted and applies with full force. It is fallacious to urge that the Disqualification regarding use of drug operates only in presenti. The rules are silent and language of Rule 6.2.2 leaves no manner of doubt that even the past acts are covered. It is contended that the words "in any way concerned" covers a case of connection

with Drug trafficking at any time, present or past. It is an retractive provision. A drug trafficker, therefore, cannot be the office bearer of a public body like BCCI. It is submitted that the very purpose of inserting this regulation would be defeated if the interpretation placed by the respondents on them is accepted. Further, it is denied that the dispute in Rajasthan Cricket Association has anything to do with the subject petition. The petition raises an important question with regard to the continuance of respondent no.2 on the working committee of the first respondent Board. It is necessary to go into the issue as to who are fit and eligible to work on the same. In such circumstances, attempt to bring in other issues including the arbitration proceedings is to confuse and mislead this Court.

13. Thus, whether a convict under law is disqualified to hold any position is the core issue involved. This is not a private dispute or question and cannot, therefore, held to be covered by any award much less under the Arbitration and Conciliation Act. That apart, such an award cannot bind this Hon’ble Court.

14. For properly appreciating the rival contentions, some facts need to be noticed. In this case, respondent no.2

was facing a criminal case and he pleaded guilty to a charge of felony of conspiracy to possess with intent to deliver more than 1 gram of Schedule II controlled substance, cocaine (85 CRS.05820). He bargained for sentence in as much as he offered to plead guilty and sought some remission/concession in the sentence. That plea was contained in the Application made on 24th June, 1985 and it appears that he pleaded guilty in or about 1985 when he was aged 20 years and was enrolled as a student of Duke University, Durham North Caroline which had about 50 fraternities (houses) and each fraternity had about 40/45 students but there was serious competition. Respondent no.2 belonged to one fraternity while one Alexander Van Dyen led him and other students to a motel room where they were told that they could get notes for their project for "Spring Break". The allegation is that when they entered the Motel room they were confronted with a man with shotgun who robbed them at a gun point. The students came back perturbed and humiliated. They narrated the incident to their fraternity. Their fraternity concluded that the said Alexander purposely involved them in the case with a view to spoil their project "Spring Break". The said Alexandar admitted to have been involved in the case and robbery was committed by his distant cousin Stepherd Small. Alexander

apologized and promised that he would get their money and belongings if allowed to go back. Alexander went to his fraternity. However, during the course of interrogation by Campus police, Alexandar falsely stated that he had accompanied the students for purchasing the cocaine and named certain students including the second respondent for having kidnapped and assaulted him. It is on these allegations that on 24th February, 1985 the second respondent and other students were charged by the General Court of Justice, Superior Court being Durham County.

> "(a). File No.85-CRS-0589 - Unlawfully, willfully and feloniously kidnapped Alexandra Van Dyne, a person who had attained the age of 16 years by unlawfully confining him, restraining him and removing him to one place to another without his consent and for the purpose of doing serious bodily injury to him and terrorizing him, Alexandra Van Dyne was seriously injured and said kidnapping was committed in violation of N.C.G.S.14-39.
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> (b) Unlawfully, willfully and feloniously did assault and inflict serious injury upon Alexandra Van Dyne by heating him with hands (fists) and feet and kicking him and hitting him in the face,

causing soft tissue injuries, bruises, black etc. lacerations on the face and body, possible kidney damage and requiring hospitalization for two days for treatment in violation of N.C.G.S.14-33(b)(1).

(c) File 85-CRS-05820 - Unlawfully, willfully and feloniously did conspire with Alex Meckinnon and other persons unknown to commit the felony of trafficking in more than 400 grams of cocaine in violation of N.G.G.S.90-95(1)"

10. The respondent in the background of the case further added that since the case was reported in the press, in order to avoid further publicity, embarrassment, protracted litigation in a foreign country, heavy costs and consequent interventions with his academic carrier etc. he entered into "Plea Bargaining" permissible in law without giving his defence version upon the following terms and conditions:

> "Upon the Courts accepting these pleas, the State will dismiss all other charges against the defendant arising out of the events of February 23, and 24,1985,

> including his charge in 85-CRS-09809 and, if requested the defendant will give truthful testimony about facts within his knowledge in the trial of any co-defendant."

11.The respondent submitted that as a consequence of "Plea bargaining" he pleaded guilty to the following revised charges :

(a) Felony of conspiracy to possess with intent deliver more than one gram of the Schedule II Control Substance, Cocaine (85 CRS-05820).

(b) Misdemeanours of false imprisonment (85 CRS 05819 Count I and simple assault (85 CRS 05819) Count II).

Upon consideration of the record, proper evidence presented, answers of defendant and statements of the lawyer for the defendant and the prosecutor the Presiding Judge of the General Court of Justice, Superior Court Division, Durham County by his order dated 24th June, 1985 accepted the "Plea Bargaining" of the respondent and found him guilty

> for the offences of (i) false imprisonment misdemeanour and (ii) simple assault misdemeanour and considering the said offences for the purpose of judgment sentenced the respondent for a term of two years and with a fine of $ 10000 and instead of sentencing, placed him on supervised probation for five years on the conditions specified in the order dated 24.6.1985 (Annexure A-1). In File 85-CRS-05820 the said Court order "prayer for judgment is continued from term to term of this Court for a period of five years. The $ 50,000 cash bond will remain with the Court until a final judgment is entered".

15. Thus, the second respondent pleaded guilty to some of the charges and was put on probation. It is his case that the General Court of Justice Superior Court Division, Durhan County adjourned the judgment in the case relating to offence of possessing one gram of cocaine and did not pass any judgment within a period of five months and cash bond of 50,000 pound was discharged. Thus, he was not convicted for the charge of conspiracy to possess cocaine. He was acquitted of the charge of second degree kidnapping and convicted only for the offence of misdemeanour. He was acquitted of the charge of assaulting, inflicting

serious injury but was convicted for misdemeanour of simple assault. Thus, It is his case that he was not convicted of the criminal offence involving "Moral turpitude." The incident of 23rd/24th February, 1985 is "stale" and cannot be used to his prejudice and detriment. That cannot be made a ground for his disqualification for seeking election and holding the post of President of Zonal Cricket Association or Vice President of the first respondent Board.

16. In (2005) 4 SCC page 741, (Board of Control for Cricket in India and another Vs. Netaji Cricket Club and others),the Hon’ble Supreme Court held that the first respondent is an association registered under Tamil Nadu Society Registration Act. It enjoys a monopoly status as regards regulation of Sports of cricket in terms of memorandum of association and Articles of Association. It controls the sport of cricket and lays down law therefor. It, inter alia, enjoys the benefits and has some rights. It earns a huge revenue. It exercises enormous public functions. It has an authority to select players and umpires to represent the country in the international forums. The rules of the Board clearly demonstrate that without its recognition no competitive cricket can be hosted either within or outside the country. Its control

over the sport of competitive cricket is deeply pervasive and complete. More or less similar view has been taken in Zee Telefilms Ltd. reported in A.I.R. 2005 SC 2677. In paras 29 and 30 of the said decision, majority observed thus:

> "29. It was then argued that the Board discharges public duties which are in the nature of State functions. Elaborating on this argument it was pointed out that the Board selects a team to represent India in international matches. The Board makes rules that govern the activities of the cricket players, umpires and other persons involved in the activities of cricket. These, according to the petitioner, are all in the nature of State functions and an entity which discharges such functions can only be an instrumentality of State, therefore, the Board falls within the definition of state for the purpose of Article 12. Assuming that the above mentioned functions of the Board do amount to public duties or State functions, the question for our consideration is: would this be sufficient to hold the Board to be a State for the purpose of Article 12. While considering this aspect of the argument of the petitioner, it should be borne in mind that the State/Union has not chosen the Board to perform these duties nor has it legally authorised the Board to carry out these functions under any law or agreement. It has chosen to leave the activities of cricket to be controlled by private bodies out of such bodies' own volition (self arrogated). In such circumstances, when the actions of the Board are not actions as an authroised representative of the State, can it be said that the Board is discharging State functions? The answer should be no. In the absence of any authorisation, if a private body chooses to discharge any such function which is not prohibited by law then it would be incorrect to hold that such action of the body would make it an instrumentality of the State. The Union of India has tried to make out a case that the Board discharges these functions because of the de facto recognition granted by it to the Board under the guidelines framed by it but the Board has denied

> the same. In this regard we must hold that the Union of India has failed to prove that there is any recognition by the Union of India under the guidelines framed by it and that the Board is discharging these functions on its own as an autonomous body.
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> 30. However, it is true that the Union of India has been exercising certain control over the activities of the Board in regard to organising cricket matches and travel of the Indian team abroad as also granting of permission to allow the foreign teams to come to India. But this control over the activities of the Board cannot be construed as an administrative control. At best this is purely regulatory in nature and the same according to this Court in Pradeep Kumar Biswas's case (supra) is not a factor indicating a pervasive State control of the Board."

17. In the above circumstances and in the facts peculiar to this case, we are of the opinion that there is no substance in the preliminary objection to the maintainability of this writ petition even as a public interest litigation. Considering the status of the Board, the nature of interest generated by the sport the intent of general public and the controversy involved, we are of the opinion that the petitioner could have filed the instant writ petition as a "public interest litigation". As far as the motive of the petitioner is concerned, beyond alleging that he has blessing or backing of a group which is a rival of the second respondent's group in the Board election, no material has been placed before us to reach a conclusion that the petition is motivated by any private interest or is instituted with a view to gain

publicity. Merely alleging that the petition was aimed at harassing and embarrassing the second respondent, would be of no assistance. Therefore, in absence of any material, we cannot dismiss the petition as being privately or politically motivated. Moreover, the petition is already admitted and listed for final hearing. We, therefore, do not feel that the ptition can be dismissed on the issue of maintainability.

18. Turning to the main issue, it is true that the charges were framed against the second respondent and that the criminal proceedings were initiated wherein he pleaded guilty and got remission in sentence. However, as narrated above, the incident is of February, 1985. The elections have been held more than two decades thereafter. It would be futile to now consider the plea that having been elected as Vice President, second respondent must be disqualified because he has been convicted in the past of an offence in connection with illegal drugs. Considering that the case is of 1985 and conviction is also of the same year, and nothing has been shown that he is or is likely to indulge in similar activity, in our view, applying the Regulations and prohibition therein at this late stage without anything more would not be fair, just and proper. More so, when a substantial part of the term

of respondent no.2 is over and no other incident involving respondent no.2 in the charges relating to possession of or use of any drug or pscychotrophic substance has been pointed out. There is no conviction and sentence on this count, other than the one referred to above.

19. In such circumstances, raking up stale and old cases and thereafter considering the applicability of the regulations to the same would not be proper. More so, when the second respondent has contested the election to the State Cricket Association. He has been found eligible for election at the level of the first respondent Board. He has been elected as well. Respondent no.1 Board did not apply the regulations to the case of respondent no.2 as in its opinion regulations cannot be invoked to a case or a charge prior to introduction of the same. In other words, the regulations being of 2000 and coming into force on 6th February, 2001 cannot be applied to any charge, conviction or sentence prior to its being brought into effect is an opinion based on some advice and interpretation placed on the same. It is after taking this view and forming an opinion that the second respondent was allowed to contest the elections. Whether this conclusion is bonafide and correct or not is a matter

which is subjudice. The civil Appeal in the Supreme Court is pending. More over, the award of the Arbitrator accepts this plea and interpretation.

20. Once, we are of the view that incident itself is very old and stale, then, we need not enter into any larger controversy. We do not wish to go into the aspect as to whether the regulations would apply to any incident prior to the same being brought into effect. We also need not go into the question as to whether the regulations prohibit continuation of the elected administrator. The interpretation of the words "shall not use or possess" or "in any way be concerned in use or distribution of illegal drugs" also need not be decided in the peculiar facts of this case. However, they seem to be inserted with a clear intent. Though, prima facie, the words and phraseology would indicate that past acts and conduct are also intended to be covered. In that sense, the provision applies to administrator, past or present. The issue need not be debated further.

21. The learned Counsel for the petitioners would urge that the regulations prohibit continuance in offence of an elected administrator. The respondents, at the same time, would urge that it would apply to a case where the

Administrator, should not prior to his assumption of the office be found in possession of or using illegal drug and should not be concerned in the usage or distribution of the same. However, it would be proper to bear in mind the object and purpose of a regulation like 6.2.2. In this behalf useful reference can be made to the following observations of the Supreme Court in K.Prabhakaran Vs. P.Jayarajan reported in A.I.R.2005 Supreme Court 688.

> "54. The purpose of enacting disqualification under Section 8(3) of the RPA is to prevent criminalisation of politics. Those who break the law should not make the law. Generally speaking, the purpose sought to be achieved by enacting disqualification on conviction for certain offences to prevent persons with criminal background from entertaining into politics, and the House a power ful wing of governance. Persons with criminal background do pollute the process of election as they do not have many a holds barred and have no reservation from indulging into criminality to win success at an election. Thus, Section 8 seeks to promote freedom and fairness at elections, as also law and order being maintained while the elections are being held. The provision has to be so

meaningfully construed as to effectively prevent the mischief sought to be prevented. The expression "a person convicted of any offence" has to be construed as all offences of which a person has been charged and held guilty at one trial. The applicability of the expression "sentenced to imprisonmenmt for not less than 2 years" would be decided by calculating the total term of imprisonment for which the person has been sentenced.

55. Shri K.K.Venugopal, learned senior counsel appearing for respondent in one of the appeals submitted that Section 8 of the RPA is a penal provision and, therefore, should be construed strictly. We find it difficult to countenance the submission. Contesting an election is a statutory right and qualifications and disqualifications for holding the office can be statutorily prescribed. A provision for disqualification cannot be termed a penal provision and certainly cannot be equated with a penal provision contained in a criminal law. If any authority is needed for the proposition the same is to be found in Lalita Jalan & Anr. Vs.Bombay Gas Co.Ltd. and ors.(2003) 6 SCC 107,

> which has held section 630 of the Companies Act, 1956 not to be penal provision. The Court has gone on to say, "the principle that statute enacting an offence or imposing a penalty is to be strictly construed is not of universal application which must necessarily be observed in every case."

22. In our view the petition deserves to be dismissed on a short ground that the incident of 1985 and conviction so also sentence of the second respondent therein would not, without anything more, be a Impediment or Bar in second respondent continuing in office. However, this would be subject to the outcome of the proceedings which are pending in the Supreme Court. Since very same incident is the foundation and basis in the arbitration award and other proceedings, we are of the view that our decision cannot be construed as permission to the second respondent to continue in office despite an adverse result or outcome. If the award is ultimately overturned or held to be not binding so also the Supreme Court taking another view of the matter in the pending proceedings, the second respondent’s continuance in the office must depend upon the outcome thereof.

23. Before parting, we would observe that the first

respondent Board is performing important public functions. It has to act with great responsibility and all its actions must not jeopardize or shake the faith and trust of the cricket loving public and common man in this country. It is given a monopoly status for good reasons. The cricket loving public is of the view that its interests are safe in the hands of the Board. The younger generation and those interested in making the game a career also look upon the Board in the same manner. The Board should not do anything by which it betrays the faith and trust of the people. It should act and function as a Trustee of this section of public. Once it has been put in charge of enormous funds so also conferred with drastic and wide powers to control, monitor, manage and administer the game, then, it is of utmost importance that its officers and office bearers are persons of calibre and character.

24. Mr.Singhvi submits that the allegations made against the Board and its senior official are grave and serious. The game also is passing through a crucial phase. There are incidents of match fixing and betting as well. It is alleged that several senior officials and players are involved in the same. We do not wish to say anything one way or the other. However, when such and other

allegations about misuse of funds and abuse of powers are being levelled, then, it is of utmost importance that the Board is manned by people who have experience of playing and administering the game It will not be proper if the Board is a centre for power politics. The board should not become a tool for Musclemen, Merchants or Media Barons and power brokers. It is said that cricket is a gentleman's game. The game is not just about generating Revenue or a business venture. It is a sport. Its management and administration should be in the hands of sports persons and sports lovers. If people from all walks of life and those with ambitions find the Board a place to fulfil their aspirations and dreams, then, a time will come when the management of the Board will have to be taken over by cricket loving and playing people. If that is not to happen and if stringent regulatory measures framed by the Board itself are to be implemented in letter and spirit, then the Board should take care that those involved in criminal cases not just relating to illegal drugs but other serious charges have no place in the administration. The purity of electoral process and sanctity and dignity attached to such offices must be preserved at all costs. Hence, it is also for the State to whom doctrine of public trust applies to take a note of allegations made in this petition. Ultimately, the State

cannot remain a spectator to the power game. Time will come when the State will have to use its power and authority to check any mismanagement and mal-administration. We hope and trust that the Board would not take a hyper technical and strict view of the regulations so also defeat the very aim, spirit and purpose of inserting the same. The elections at all levels have to be free and fair. They ought not be fought on party lines. Ultimately, the sports lovers and administrators are not rivals. The should act as playmates. The elections ought to be conducted in the same spirit in which the game of cricket is played. An opponent should not be looked upon as an Adversary and rival. The common thread being interest in the game and preserving and safeguarding the same. Therefore, when like minded people come together, then, even elections are a friendly contest which are based on sportsman spirit. . This is the spirit in which game is played at international and local levels. The same spirit must also be demonstrated in the elections at the zonal and central levels.

25. In R.Sai Bharathi Vs. J.Jayalalitha and others reported in A.I.R. 2004 Supreme Court, 692, the Hon’ble Supreme Court has observed thus:

"57. Before we part with the matter, it is necessary to notice certain aspects of the matter.

58. Crime is applied to those acts which are against social order and are worthy of serious condemnation. Garefalo, an eminent criminologist, defined ’crime’ in terms of immoral and anti social acts. He says that "crime is an immoral and harmful act that is regarded as criminal by public opinion because it is an injury to so much of the moral sense as is possessed by a community - measure which is indispensable for the adaptation of the individual to society." The authors of the Indian Penal Code stated that :-

.....We cannot admit that a Penal Code is by any means to be considered as a body of ethics, that the legislature ought to punish acts merely bercause those acts are immoral, or that, because an act is not punished at all, it follows that the legislature considers that act as innocent. Many things which are not punishable are morally worse than many things which are punishable. The man who treats a generous benefactor with gross ingratitude

and insolence deserves more severe reprehension than the man who aims a blow in passion, or breaks a window in a frolic yet we have punishment; for assault and mischief, and none for ingratitude. The rich man who refuses a mouthful of rice to save a fellow creature from death may be a far worse man than the starving wretch who snatches and devours the rice; yet we punish the latter for theft, and we do not punish the former for hard heartedness."

61. Report leading to IPC makes it clear that criminal law merely prescribes the minimum standards of behaviour, while in public life, those who hold high offices should not take shelter under the umbrella of criminal law but stand by high probity. Further, criminal law is meant to deal with criminals ordinarily, while Code of conduct is observed as gentlemen’s agreement. Persons in public life, who are genetlemen, follow such Code instead of taking escape routes by resorting to technical pleas as arise in criminal cases. Persons in public life are expected to maintain very high standards of probity and, particularly when there is likely to be even least bit of conflict of interest between the office one holds

> anthe acts to be done by such person, ought to desist himself from indulging in the same. Such standards of behaviour were scrupulously observed in the either days after independence, but those values have now dwindled and instances of persons holding high elective offeces indulging in self aggrandisement by utilising Government property or in distribution of the largesse of the Government to their own favourties or for certain quid pro quo are on the increase. We have to strongly condemn such actions. Good ethical behaviour on the part of those who are in power is the hallmark of a good administration and people in public life must perform their duties in a spirit of public service rather than by assuming power to indulge in callous cupidity regardless of self imposed discipline."

We may also impress upon the concerned authorities that occasion to file such petitions should not arise again. There should be no occasion for this Court to entertain the petition containing allegations, which are subject matter of the instant petition. If the Board elections and board disputes have to come to Court, then, there will not be any difference between the functioning of a cooperative Bank or cooperative credit society, a company

etc. and the elections to such or other local bodies and that of the Board. If board elections are also going to be fought on identical lines then the Board may think of doing away with this process and substituting it by better alternatives. Otherwise, in given case Court's of law will have to interfere, ofcourse, in properly instituted legal proceedings. We hope and trust that time to take such harsh steps and decision will not come. The Board and its officials ought not be making allegations against each other or else group politics would destroy the game itself. We hope this petition should serve as a reminder to all concerned. Although, we have dismissed this petition, we are constrained to make the above observations. We are compelled to make them because the manner in which the petition was argued demonstrated that board elections are taking an ugly turn. Once the litigation is argued and conducted in this spirit, then, demeanour of the parties need to be commented upon. More so, when the litigation involves a mighty body such as the Board of Control for cricket in India. Rule discharged. No order as to costs.

(SWANTATER KUMAR C.J.)

(S.C.DHARMADHIKARI J.)